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for fire protection purposes, and through the negligence of the landlord the pipe freezes, bursts, and floods the premises leased, regardless of municipal ordinance as to maintenance of such pipes, the court cannot say as a matter of law that the landlord is not liable, merely because the pipe was located on the premises of the tenant; the failure to repair being, in effect, an act of commission.

[Ed. Note.—For other cases, see *Landlord and Tenant*, Cent. Dig. § 649; Dec. Dig. § 166 (3).* 9 Va.-W. Va. Enc. Dig. 159.]

Error to Law and Equity Court of City of Richmond.

Action by the Adams Grain & Provision Company against the Chesapeake & Ohio Railway Company. To review an order sustaining defendant's demurrer to the evidence, plaintiff brings error. Reversed.

J. Kent Rawley and *John Howard*, both of Richmond, for plaintiff in error.

D. H. & Walter Leake, of Richmond for defendant in error.

DALTON ADDING MACH. CO. v. COMMONWEALTH.

March 16, 1916.

[88 S. E. 167.]

1. Commerce (§ 69*)—Subjects of Regulation—Foreign Corporations—License Tax.—A foreign corporation has the right to so limit and conduct its business within the state as to keep it strictly within the accepted meaning of interstate commerce, and when it does so no license tax can be imposed upon it.

[Ed. Note.—For other cases, see *Commerce*, Cent. Dig. §§ 100, 113-119; Dec. Dig. § 69.* 7 Va.-W. Va. Enc. Dig. 867.]

2. Commerce (§ 40 (2)*)—Subjects of Regulation—Sales by Agent—"Interstate Commerce."—Where an agent of a foreign corporation exhibits a sample machine to a customer, and on receiving an order addressed to the home office, satisfactory to the company a machine is shipped from the factory, either to the customer or to the agent within the state to be delivered to the customer, the business is strictly interstate commerce and the state can impose no condition, license tax, or any other burden whatever upon such business.

[Ed. Note.—For other cases, see *Commerce*, Cent. Dig. §§ 29, 30; Dec. Dig. § 40 (2).* 7 Va.-W. Va. Enc. Dig. 875.

For other definitions, see *Words and Phrases*, First and Second Series, *Interstate Commerce*.]

3. Commerce (§ 16*)—Subjects of Regulation—Nature of Transaction—"Interstate Commerce."—The character of business as inter-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

state commerce or otherwise does not depend on the citizenship of the parties, but on the essential character of the transaction.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 2; Dec. Dig. § 16.* 7 Va.-W. Va. Enc. Dig. 865.]

4. Commerce (§ 40 (1)*)—Subjects of Regulation—Sales—"Interstate Commerce."—That at some stage of a commercial transaction it is necessary to have the approval of the seller, who is a citizen of and resides in a different state, does not render the transaction interstate commerce.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. §§ 29, 30; Dec. Dig. § 40 (1).* 7 Va.-W. Va. Enc. Dig. 865.]

5. Commerce (§ 69*)—Means of Regulation—Foreign Corporations—License Tax.—That the intrastate business of a foreign corporation is smaller than its interstate business does not exempt it from the requirement of a license tax by the state where the domestic business is substantial in its volume.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. §§ 100, 113-119; Dec. Dig. § 69.* 7 Va.-W. Va. Enc. Dig. 874.]

6. Corporations (§ 648*)—Foreign Corporations.—The ratio of profits on the domestic business of a foreign corporation to a license tax by the state is immaterial on the question of the corporation's liability to the tax.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 2516; Dec. Dig. § 648.* 9 Va.-W. Va. Enc. Dig. 315.]

7. Commerce (§ 40 (1)*)—Subjects of Regulation—Sale of Goods—"Intrastate Commerce."—The business of a foreign corporation in bringing into the state its adding machines before selling them, in maintaining a stock of machines for exhibition and trial and selling them after their transportation in interstate commerce has ended and they have become mingled with the general mass of property in the state, in renting such machines and collecting rents therefor, in buying and exchanging machines for those of other make, and selling the machines received in exchange at will, in employing a mechanic in the state and entering into yearly contracts for repairing machines, and in keeping on hand in the state parts of machines and a stock of paper and ribbons suitable for use on the machines, which are frequently sold in the state, constitute intrastate commerce in the transaction of which the company is subject to state regulation.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. §§ 29, 30; Dec. Dig. § 40 (1).* 7 Va.-W. Va. Enc. Dig. 867.]

For other definitions, see Words and Phrases, Intrastate Commerce.]

Appeal from State Corporation Commission.

The Dalton Adding Machine Company was fined \$1,000 by

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

order of the State Corporation Commission, and appeals. Affirmed.

Harold S. Bloomberg, of Richmond, for appellant.

John Garland Pollard, *Atty. Gen.*, for the Commonwealth

HANSEL *v.* COMMONWEALTH.

March 23, 1916.

[88 S. E. 166.]

1. Forgery (§ 38*)—Prosecution—Evidence.—In a prosecution for forging an option contract for the sale of coal lands and attempting to employ it as with intent to defraud, a contract between accused and R., who effected a sale of the land under the forged document, for division of the commissions claimed is admissible in evidence, where its identity was established by the attorney who drew it.

[Ed. Note.—For other cases, see Forgery, Cent. Dig. § 108; Dec. Dig. § 38.* 6 Va.-W. Va. Enc. Dig. 249.]

2. Forgery (§ 37*)—Prosecution—Evidence.—In such case, where accused's associate R. sued to recover commissions claimed under the forged contract and accused testified in his behalf, the agreement between them to share commissions is material.

[Ed. Note.—For other cases, see Forgery, Cent. Dig. §§ 105-107, 111; Dec. Dig. § 37.* 6 Va.-W. Va. Enc. Dig. 250.]

3. Criminal Law (§ 1036 (7)*)—Appeal—Presentation of Grounds of Review Below—Necessity.—In a prosecution for forgery of a contract used in a civil suit in which accused was active, accused should, the trial court having ruled that his evidence given in the civil suit was receivable, have clearly objected to the authenticity of the stenographic report of his testimony if he desired to raise that issue on appeal.

[Ed. Note.—For other cases, see Criminal Law, Dec. Dig. § 1036 (7).* 1 Va.-W. Va. Enc. Dig. 557.]

4. Criminal Law (§ 539 (2)*)—Evidence—Admissibility.—Where accused and another forged and attempted to employ a forged option contract for the sale of lands under an agreement for accused to share in the recovery of commissions claimed by his confederate, and in an action on such contract accused testified in support of the contract, his testimony so given being in his own behalf, is admissible in a prosecution for the forgery, notwithstanding Code, § 3901, providing that in a prosecution other than for perjury, evidence shall not be given against accused of any statement made by him as a witness upon a legal examination, unless such statement was made when examined in his own behalf.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1230; Dec. Dig. § 539. (2).* 4 Va.-W. Va. Enc. Dig. 82.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.